

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 20-CR-306(NGG)
Plaintiff, :
-against- : United States Courthouse
FRANGESCO RUSSO, : Brooklyn, New York
Defendant. : Wednesday, August 19, 2020
- - - - -X : 2:30 p.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPEAL
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: SETH D. DuCHARME, ESQ.
Acting United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: LINDSAY K. GERDES, ESQ.
Assistant United States Attorney

For the Defendant: LARUSSO, CONWAY & BARTLING, LLP
300 Old County Road
Suite 341
Mineola, New York 11501
BY: JOSEPH CONWAY, ESQ.

Court Reporter: DAVID R. ROY, RPR
225 Cadman Plaza East
Brooklyn, New York 11201
drroyofcr@gmail.com

Proceedings recorded by Stenographic machine shorthand,
transcript produced by Computer-Assisted Transcription.

Proceedings

2

1 (All participants appearing via teleconference.)

2 THE COURTROOM DEPUTY: This is criminal cause for
3 a bail appeal, United States versus Russo.

4 Starting with the Government, please state your
5 appearances for the record.

6 MS. GERDES: Good afternoon, Your Honor. Lindsay
7 Gerdes for the United States.

8 THE COURT: All right.

9 For the defense?

10 MR. CONWAY: Good afternoon, Your Honor. It's Joe
11 Conway on behalf of Frank Russo.

12 THE COURT: Good afternoon, sir.

13 MR. CONWAY: Good afternoon.

14 MS. GERARDINO: Good afternoon, Your Honor. It's
15 Marnie Gerardino with Pretrial Services.

16 THE COURT: Yes, good afternoon.

17 And is the defendant present?

18 THE DEFENDANT: Yes, I am, sir.

19 THE COURT: All right.

20 First of all, under the local Rule Number 1.8 of
21 this court and the policies of the U.S. Judicial Conference,
22 no one may record this proceeding. Failure to follow that
23 requirement may result in sanctions.

24 The first step to take on this bail appeal is to
25 ascertain whether there is Defendant's consent to this

Proceedings

3

1 proceeding being conducted by teleconference under the
2 CARES Act and administrative order of the chief judge of
3 this court which permits conducting this bail appeal
4 remotely with your consent.

5 Mr. Russo, do you consent?

6 THE DEFENDANT: Absolutely, Your Honor.

7 THE COURT: All right. Thank you very much.

8 Now, the magistrate judge, Judge Bloom, granted
9 the application for bail. The Court has reviewed the
10 following materials: There is a letter from the Government
11 seeking a permanent order of detention, dated August 18,
12 2020 that the Court has reviewed. The Court has reviewed
13 the indictment in this case, Docket Number 20-CR-306.
14 The Court has reviewed the transcript of the proceeding
15 below and also the report of the Pretrial Services Officer,
16 and the Court thanks the Pretrial Services Officer for the
17 report.

18 So at this time, the appeal is by the Government
19 and I will have the Government make its statement.

20 Ms. Gerdes?

21 MS. GERDES: Thank you, Your Honor.

22 You know, as the Court knows, the Government does
23 not seek detention for every defendant in every case and not
24 even in every serious case, and we didn't do it here. We
25 took a very measured approach about our bail recommendation,

Proceedings

4

1 and we are appealing Judge Bloom's decision because we do
2 feel strongly about the danger posed by the defendant here.
3 Frank Russo is charged with stealing millions of dollars
4 from unsuspecting victims and leading a lavish lifestyle
5 from that fraud and from extortion; and what I would say is
6 it's very unusual that wealthy fraudsters are also charged
7 with violent crimes like the defendant. And it's even more
8 unusual to have a case against a defendant that can
9 essentially be proven by hitting play on a recording and
10 listening to his own voice. So this the somebody who is
11 facing a serious amount of jail time where there's
12 tremendous evidence against him. And so he does have an
13 incentive to flee.

14 But it's not just the risk of flight that concerns
15 us, because if that was the only appeal, frankly, I don't
16 think we would have appealed the judge's decision. We
17 agreed on a very substantial bail package in the situation
18 of other Co-Defendants here. But what brings us here is the
19 danger the defendant poses, and Defendants who are charged
20 with extortion and make threats no doubt pose a danger, but
21 in this situation with Mr. Russo, the threats are just so
22 menacing, explicit, and frankly, terrifying. He told an
23 individual that they were going to make him watch as they
24 ripped his son's teeth out, and that they were going to do
25 worse things to his wife. And Judge Bloom resting her

Proceedings

5

1 decision in part on a distinction that -- you know, that the
2 teeth-pulling from the son done by somebody else just made
3 Russo not quite as menacing because he wasn't the one doing
4 the teeth-pulling himself. And with all due respect,
5 Your Honor, I don't think that's a reasonable view of a
6 threat like this. I don't think any rational person reading
7 these threats, hearing that would be left feeling anything
8 other than terrified.

9 And I don't think Defense Counsel's argument that
10 the threat was to a fraudster, therefore it makes it okay
11 was very persuasive either, because as we state in our
12 detention memo, and I believe it's on the bottom of Page 31,
13 he also threatened another individual, and --

14 THE COURT: Mr. Alfieri?

15 MS. GERDES: Yes. He threatened Mr. Alfieri and
16 he also threatened another person involved in a business
17 dispute.

18 And what you have here, then, is a person making
19 these very, very explicit threats. You also have somebody
20 here who under his bed has this gun that we put a -- a
21 shotgun that we put a picture of in our detention memo that
22 is essentially a weapon of war, and he also had ammunition
23 at his house that was recovered during the search. So some
24 of this -- these are not just empty threats. Your Honor,
25 Mr. Russo is somebody who just simply cannot be trusted. He

Proceedings

6

1 is a danger and he shouldn't be trusted by this Court to
2 abide by the conditions of Pretrial release.

3 One way that can be demonstrated is the man wasn't
4 even honest with Pretrial Services in his interview leading
5 up to his first appearance before Judge Bloom. He said that
6 his wife was the one who bought the Motts Cove home that
7 they were set to move into later this month. That was a
8 home they purchased for about \$1.5 million. The truth is
9 that the defendant is the one who supplied all of the money
10 to purchase that home, and the home is in the name of both
11 him and his wife. So he's obviously trying to distance
12 himself from that asset by saying that his wife purchased
13 this home, but that can't be anything further from the
14 truth.

15 He also regarded an --

16 THE COURT: And --

17 MS. GERDES: I'm sorry.

18 THE COURT: Can I just ask, was that home
19 purchased with cash, meaning without a mortgage; or was that
20 purchased with a down payment and a mortgage?

21 MS. GERDES: It was purchased without a mortgage,
22 Your Honor. And I believe that he invested, you know,
23 between improvements for the home and things he was
24 purchasing for the home and design, and I think by his own
25 admission, he invested over a million dollars, then, on top

Proceedings

7

1 of that.

2 THE COURT: The report from Pretrial doesn't
3 indicate a large amount of assets on the part of this
4 defendant. Is that --

5 MS. GERDES: Correct. That was another misleading
6 statement I was going to also point out. When he listed
7 assets, he only listed \$15,000 in a checking account. He
8 omitted the house, that with these improvements, is valued
9 at two and a half million dollars plus. He omitted a house
10 in Florida that is on the market right now for \$1.5 million
11 that he co-owns with his Co-Defendant, Smookler. He omitted
12 a house in St. John that he co-owns. He omitted two boats.
13 He omitted the business account that he uses as his own
14 personal slush fund to pay his expenses that as of last
15 Friday had an account balance of \$185,000. He omitted the
16 \$85,000 in cash that was recovered from his residence upon
17 his arrest. And, you know, frankly, Your Honor, I just do
18 not think this is a person that the Court should go out on a
19 limb for when he can't even give honest, truthful answers to
20 the Pretrial Services Agency, the agency that would be
21 tasked with supervising him upon his release, and, you know,
22 with the type of threats that he has made.

23 And so we do think that Judge Bloom, you know, got
24 the bail determination wrong here, and that is why we are
25 before Your Honor. We don't think that there is a

Proceedings

8

1 combination of conditions that can protect the public and
2 also keep the defendant here for future court appearances.

3 THE COURT: Well, let me just pursue that for a
4 moment. In your detention memorandum of August 18th, you
5 indicated that you were seeking detention for both Mr. Russo
6 and Mr. Smookler, but you accepted the magistrate judge's
7 determination that Mr. Smookler could be released and did
8 not appeal that. So how do these two different individuals
9 who you were seeking detention, if only you were seeking
10 detention, how are they different from one another in a
11 meaningful way that would inform the Court's understanding
12 of why you are appealing from the magistrate judge's
13 determination about Mr. Russo but not about Mr. Smookler?

14 MS. GERDES: Your Honor, we ultimately agreed on
15 the bail package for Mr. Smookler. So we were not in a
16 situation where we were appealing or considering an appeal
17 for him. The one contested bail package yesterday was
18 Mr. Russo's bail package, and we do just think that the
19 threats that he has been caught on recordings making just
20 show that he is that much more of the danger. Our primary
21 concern with Mr. Smookler was more the risk of flight,
22 whereas with Mr. Russo, based on all the threats that we
23 have outlined in our detention memo, the real concern with
24 him is the danger that he poses.

25 THE COURT: I see.

Proceedings

9

1 And the weapon which was shown on Page 31 of your
2 detention memorandum letter, that was found in Mr. Russo's
3 home?

4 MS. GERDES: Correct.

5 THE COURT: And tell me what that is again. Is
6 that the -- do you believe that's the tactical shotgun that
7 you have quoted as referring to that he would use, quote,
8 "If anything gets crazy..." end quote? Is that the one that
9 you believe he's referring to?

10 MS. GERDES: Yes, Your Honor. I do believe that.
11 I think that that's accurate.

12 And, you know, he's also basically just flaunting
13 his complete disrespect for the law at different points in
14 time. You know, telling people, they can call the police.
15 They can call the FBI, that basically, you know, he's above
16 the law in essence. And I don't think that this is somebody
17 who should be trusted. He said, "Before the law can even
18 arrest me, I'll have everyone with a fucking bullet in the
19 head."

20 THE COURT: Okay. Thank you.

21 MS. GERDES: Thank you.

22 THE COURT: Mr. Conway?

23 MR. CONWAY: Yes, thank you, Your Honor.

24 Let me start with the premise that the Court may
25 not be aware of this: The bail that we put forward in front

Proceedings

10

1 of Judge Bloom yesterday was three properties that totalled
2 1.5 or 1.6 in equity, and that's the package that
3 Judge Bloom agreed to -- or at that point agreed to. Since
4 that time, and I have made Ms. Gerdes aware of this, we have
5 two additional properties from a family member and a
6 longtime friend that brings the package up to 2.5 million in
7 equity. So Judge Bloom had set bail at 2 million secured by
8 the three properties. We now have 2.5 million. I think
9 that's important in this respect, Judge: Obviously, it's
10 five properties as opposed to three. But it's the same
11 exact package that the Government consented on
12 Mr. Smookler's bail. And I think that's important for a
13 couple reasons, Judge, and I'll get into that and then I'll
14 get into the threats themselves.

15 As the Court said in answer to the U.S. Attorney,
16 yesterday's bail memorandum, they sought detention -- "they"
17 being the Government, sought detention on both grounds for
18 both Smookler and Russo. In terms of the threats, what we
19 have here, Judge, I know the Government mentioned a second
20 person, and I'm not poo-pooing that, and I'll get to that,
21 but the person that was threatened was an individual as the
22 Court said named Greg Alfieri. He was somebody who has been
23 threatened by numerous people. He's currently under
24 indictment in your courthouse for running a Ponzi scheme in
25 excess of \$100 million. A good chunk of that money comes

1 from the defendants in this case. So obviously they were
2 pissed or mad at him, and the telephone calls, even though
3 they're colorful and ugly, were nothing more than puffery
4 and blustering. And I've had a difficult time trying to
5 square the Government's position on Fran Smookler and their
6 position on Frank Russo when you look at the threats.
7 Because if you look at their detention memo and if you go to
8 Page 22 and Page 23, they've linked Smookler and Russo
9 together. They join them at the hip. On Page 22 of the
10 bail memo, they write, "Smookler and Russo vowed to shoot
11 Alfieri....," and there's a whole series of recorded calls.
12 There's Smookler and Russo. Smookler says, "The originators
13 on the loan are crazy people and animals."

14 On Page 23 there's a reference that Smookler and
15 Russo, again together, threatened Alfieri and his family.
16 On Page 23 in Paragraph 22 they quote Smookler in a phone
17 call basically saying, "You watch, my man. You fucked me.
18 Now watch what I am going to do to you. I'm coming,
19 brother, full F'ing steam ahead." He goes on to say,
20 "People in the street are going to inflict harm on you for
21 causing me suffering."

22 Later in that page, Judge, on a phone call that's
23 3/21 of '20, Smookler says to Alfieri, "Your wife will pay
24 for your mistakes." A little later he says, "I don't give
25 an 'F'. I don't care. You're going to get tortured."

Proceedings

12

1 Lastly in that call, he says, "We are going to find your
2 wife today. That's happening."

3 On a 5/5/20 call, May 5th, 2020, Smookler again
4 says, "I'm not going away. Big problem. I'm going to turn
5 ungentlemanly and I will 'F' you and your family up."

6 So I'm not making the argument, Judge, that -- you
7 know, that the calls are acceptable. They're certainly not.
8 But they certainly join both Smookler and Russo together at
9 the hip. In fact, in one phone call in which Russo is
10 making some ugly, ugly threats, Smookler joins in and says,
11 "What are you going to do? Are you going to go down in a
12 blaze of glory?"

13 I don't understand why Smookler is different when
14 I have the same exact bail package?

15 As to the threats themselves, Judge, and I'll go
16 back. I know they emphasize Mr. Russo had a weapon. They
17 took a weapon out of Mr. Smookler's home yesterday during
18 the search as well.

19 They do mentioned a separate individual --

20 THE COURT: Let me just ask -- excuse me. Let me
21 just turn to the Government.

22 What type of weapon was taken from Mr. Smookler's
23 home, Ms. Gerdes?

24 MS. GERDES: Your Honor, it was a shotgun, but I
25 just do not believe that it was the same type of tactical

Proceedings

13

1 shotgun as Mr. Russo had.

2 THE COURT: I understand.

3 I'm sorry, Mr. Conway. You may continue, sir.

4 MR. CONWAY: Thank you, Your Honor.

5 And, Judge, I did mention that there's a second
6 threat. We have a 34-page memo that details in great detail
7 a lot of things, and there's five lines about a potential
8 second threat. There's no date. There's no time. There's
9 no individual name as to when, where, and who this happened
10 to.

11 In terms of the threats themselves, Your Honor,
12 while I don't condone them, you can see by the very nature
13 of the threats that although colorful, it was nothing more
14 than bolstering and puffery. These individuals -- and I
15 mean Smookler and Russo as well as the other defendant,
16 Kurland -- and, you know, the Government did consent on
17 Kurland as well, and in the detention memo they said that
18 Kurland was aware of these threats, but they contented to
19 his bail package as well. These threats, Judge, take
20 place --

21 THE COURT: And did they find a shotgun in his
22 house, too?

23 MR. CONWAY: No, Your Honor.

24 THE COURT: All right. Well, okay. So, you know,
25 he --

Proceedings

14

1 MR. CONWAY: Right.

2 THE COURT: Let me --

3 MR. CONWAY: I'm just weighing in context as to
4 what they're agreeing to and what they're not.

5 So in these threats, Judge --

6 THE COURT: Yeah.

7 MR. CONWAY: -- these threats happened between
8 March and May of this year. If the Government is so
9 egreged -- or they're so outraged by the threats, why did
10 they wait three months to make any arrests? There's nothing
11 happening since May 20th. There were wiretaps in this case,
12 there was nothing here past May 20th showing any threats
13 whatsoever. Alfieri was on the street. He was not arrested
14 until the 10th of July, and that's because, Judge, these
15 threats were nothing more than trying to get their money
16 back that Alfieri had taken from them. These threats were
17 colorful. They were boisterous, but they were nothing more
18 than puffery.

19 Alfieri's indicted now. I think he may or may not
20 be a Government witness. The factors that Judge Bloom put
21 together for a bail package such as house arrest and
22 electronic monitoring and all the other conditions, there is
23 no danger here that Frank Russo is to anybody in this
24 particular case at all at this time. Given that there is a
25 bail package of five separate properties from family members

Proceedings

15

1 and somebody who has known Frank for almost his entire life,
2 that's worth 2.5 million, in addition to the home and the
3 Florida home that they've seized, that's in excess of over
4 \$5 million.

5 I will say a couple things, Judge, as to what the
6 Government's mentioned in the Pretrial report. First off,
7 the house on Roslyn was purchased way back in, I believe,
8 October or November of last year. They haven't been able to
9 move in because of COVID. The house is in a trust. It's in
10 both their names, him and his wife's, and his wife is the
11 trustee of the trust. So in essence, she does own the house
12 technically, but it is his house as well.

13 As far as the Florida house goes, Judge, that
14 house has sold. In fact, there's a closing due on Friday.
15 So for all practical purposes, he doesn't own that house
16 anymore, so I don't think he omitted that to Pretrial at
17 all.

18 Frank Russo, Your Honor, is 38 years old. He's a
19 lifelong resident of New York. He has a wife for 11 years.
20 They've been together since they were 12 years old, so
21 they've been together 25, 26 years. They have two children.
22 Frank has no prior record. He's been gainfully employed his
23 whole life. He has a mother here and a brother here.
24 That's all he has. His wife has a couple of family members.
25 If he was to get out and flee or violate bail, he would be

Proceedings

16

1 leaving his mother-in-law, his wife, his brother, and one of
2 his best friends in life practically homeless. I don't
3 think he's a risk of flight at all.

4 There's no mandatory minimum in this case. In the
5 Government's memorandum, they put in a guideline range which
6 obviously is high, but -- I believe it's 97 to 100 and -- or
7 108 to 135 months, but that's certainly nothing to what
8 we're used to in seeing 240 months, 360 months or a
9 mandatory minimum of 10 to 20 years. So I don't believe
10 he's a flight risk as well.

11 All three other defendants were released. I don't
12 think Mr. Russo is any different than Mr. Smookler.

13 And lastly, Judge, in all likelihood this case is
14 going to be declared a complex case, which means it will be
15 quite some time before this case comes up for trial. We are
16 in the middle of a pandemic now in terms of sending somebody
17 to the MDC where there are no visitation rights at this
18 point. When they come back is anybody's guess. It would be
19 almost impossible to have him participate in any meaningful
20 way in his defense. And he obviously would be cut off from
21 family and friends because there is no visitation at this
22 point, and I think in the foreseeable future.

23 So based on all those factors, Your Honor, I think
24 the conditions set forth by Magistrate Bloom, which are
25 conditions that the Pretrial Services Officer in her report

Proceedings

17

1 put in there recommending a substantial secure bond, that we
2 do have a substantial secure bond. We can make the bond
3 whatever face amount the Court deems relevant, 2 million,
4 3 million, 4 million secured by five pieces of property
5 totalling 2.5 million is certainly adequate at this point
6 along with the conditions to keep Mr. Russo in check.

7 MS. GERDES: Your Honor, may I briefly respond?

8 THE COURT: Yes, you may.

9 MS. GERDES: Thank you.

10 On Page 31 we have always acknowledged that Russo
11 presents a greater danger than Smookler. We have not seen
12 the two of them similarly situated in that regard. And that
13 was capitalized by the fact that the very gun that he
14 threatened to use against an individual is the very gun that
15 we recovered under his bed, a gun with a laser sight, a
16 pistol grip, and a bump stock, a weapon that could kill
17 someone; and he had ammunition in his house that could end
18 someone's life. His threats were much, much more explicit.
19 I can proffer to the Court that the threats to the other
20 individual referenced at the bottom of Page 31 were made on
21 July 29, so less than a month ago. And, you know, with him
22 out on release and no longer on the wiretap, we cannot
23 monitor him. And we did have to take protective measures
24 out of fear for what could happen to one of the defendant in
25 this case.

Proceedings

18

1 This distinction for what he's trying to make as
2 to why he hid his assets from Pretrial is not one that I
3 appreciate or I find persuasive at all. Even though this
4 house in Florida was set to be sold, that means he would
5 have been coming in to half of \$1.5 million. That's quite
6 an asset, I would say. Mr. Smookler didn't have any trouble
7 disclosing that asset to Pretrial, nor did he have any
8 trouble disclosing the house in St. John, and he declared
9 his net worth to be at approximately \$3.8 million. So these
10 two people are just not similarly situated at all in terms
11 of the danger they pose and in terms of the trust that
12 the Court can place in them while this case is pending.

13 So we would ask Your Honor to enter a permanent
14 order of detention here.

15 MR. CONWAY: Your Honor, two quick things.

16 THE COURT: Go ahead.

17 MR. CONWAY: In terms of the danger here, it's
18 clear that they joined Smookler and Russo at the hip. And
19 if you read Pages 23 and 20 -- or 22 and 23, as I quoted
20 before, there's more quotes from Smookler in there than
21 there are from Russo.

22 In addition on Page 30, they wrote in the
23 detention mentions -- or the detention memo that they found
24 Smookler to be a greater risk of flight than any other
25 defendant in here. Yet they, for whatever reason, decided

Proceedings

19

1 to consent to the same bail package that I am putting up
2 now. I feel that it's --

3 THE COURT: No, I appreciate that, Mr. Conway.

4 I am focused more, frankly, on the dangers to the
5 community angle of this situation.

6 You know, Mr. Conway, if someone is found in a car
7 with a gun under the seat and there are four people in the
8 car, the Second Circuit has told me in circumstances like
9 that that you attribute the availability of the gun when
10 determining bail, among other issues, to everybody in the
11 car because it's within reach. In this case, I'm looking at
12 a very dangerous weapon, and I'm looking at an individual
13 who has allegedly been recorded as saying that, "I have a
14 tactical shotgun. If anything gets crazy with you guys,
15 just come straight here. I have all the lights on, I will
16 tactically shoot everybody's kneecaps off. I'm not
17 worried."

18 And then we also have this discussion about
19 yanking the teeth out of someone's son's mouth. You know, I
20 have handled organized crime cases for 20 years. I've never
21 run across that kind of a threat --

22 THE DEFENDANT: Your Honor, may I explain one
23 thing --

24 THE COURT: -- in 20 years -- excuse me. I'm not
25 done.

Proceedings

20

1 THE DEFENDANT: I'm sorry, Your Honor.

2 THE COURT: I'll give you a chance, don't worry.

3 THE DEFENDANT: I'm sorry, Your Honor.

4 THE COURT: That's something new to me. And it's
5 very troubling that we have someone here who is allegedly in
6 possession of a tactical weapon.

7 And your comment -- the one comment that I paid
8 particular sensitivity to is the idea that Mr. Alfieri, you
9 know, had cheated these Defendants, when the allegations
10 here are that the funds that he allegedly cheated these
11 Defendants out of, they're not their funds, but they were
12 funds that were entrusted to one or more of them. So we're
13 seeing that the Government's position is not that Alfieri
14 cheated them, but that Mr. Alfieri cheated somebody else
15 whose money was inappropriately invested with Mr. Alfieri.
16 So it's a distinction which I think makes some difference
17 here. People get the idea that, you know, if they got the
18 cash in their hand, it's theirs, even if it's entrusted to
19 them as a fiduciary for investment purposes. So these are
20 distinctions that bear on my consideration.

21 And I wanted you to understand that I deem anyone
22 who's got a tactical shotgun with a laser under his bed,
23 found under his bed or in his bedroom or in his house that
24 makes threats that refer to -- or is accused of having made
25 threats which refer to such a weapon, that that's an

Proceedings

21

1 extremely concerning issue, and that the Court can't view
2 that as just hyperbole or that you say around the bar with
3 your friends. I mean, these are comments that are made in
4 the context of what is alleged to be a serious conspiracy on
5 the part of Mr. Russo, Smookler, and others.

6 So I just raised those issues, and I wish you
7 would address them so I get a full record.

8 MR. CONWAY: Yes, I appreciate that, Your Honor.

9 And I totally can't disagree with the Court. It
10 is concerning, and obviously something for the Court to
11 think about. But putting it in context, Your Honor, while
12 the excerpts in the detention memo read about a call made by
13 others to Alfieri, the underlying issue here, Judge, is that
14 there was a series of contracts that Mr. Russo --

15 (Pause in proceedings.)

16 THE COURT: Yes, thank you.

17 Everyone who is not speaking should place their
18 phone on mute at this time. Thank you very much.

19 MR. CONWAY: Okay. We good?

20 THE COURT: Go ahead.

21 MR. CONWAY: Okay. Thank you.

22 What I was trying to do, Judge, is to put this in
23 context. While the detention memo does reference a loan
24 made by others, the underlying issue here is there was a
25 series of business transactions between Alfieri and the

Proceedings

22

1 defendants in this case. There were 14 different contracts
2 where they'd lent money to Mr. Alfieri, all written, all
3 signed, all agreements in the context of Mr. Alfieri
4 presumably being in the jewelry business. It was only later
5 on that they learned that Mr. Alfieri was nothing more than
6 running a Ponzi scam for which he's been indicted for. We
7 have filed -- our clients have filed notices of claims in
8 the bankruptcy court. So the underlying issue here boils
9 down to that. And then you get this loan, and basically
10 what you have, Judge, is you have somebody who has lost a
11 tremendous amount of money, realizes that it's probably
12 never coming back just blowing off a lot of steam. It's
13 crystal clear that the comments are ugly and they're -- and
14 they're certainly colorful and certainly should have never
15 been said. But I think it's also clear, Judge, that this is
16 something that were idle threats. These are things that
17 happened over the phone. They happened over a period of
18 time. They never took any action on it, and for whatever
19 reason after May 20th they stopped. We're here now on
20 August 19th, which is just about three months later, and
21 despite what I believe is wiretaps going on almost up to the
22 indictment, there were no other calls post-May 20th because
23 they realized that they're spinning their wheels. They were
24 never going to act on these complaints.

25 Frank Russo is a businessman. He's married with

Proceedings

23

1 two children. He's not a killer. He's not a shooter.
2 These were people blowing off steam. Yeah, do they make
3 colorful and ugly comments? They do, Judge. But they were
4 never going to be acted upon.

5 The bail application that was set by
6 Magistrate Bloom do not render him a danger to anybody.
7 He's going to be electronically monitored in his house
8 without the ability to leave, unless it's accepted by
9 the Court. His weapon was taken. You know, I don't see him
10 as a danger to anybody. And, you know, even the Government
11 themselves are saying he's not much of a risk of flight.

12 Given the pandemic we're in, given the nature of
13 the documents in this case and him not being able to be a
14 participant in his own defense when the Government agreed to
15 the other three individuals, to me, Judge, I just believe
16 the bail package is more than sufficient to allow him out at
17 this point.

18 THE COURT: Yeah. Let me point a couple of other
19 things out.

20 You know, I didn't see it in the papers, but the
21 situation with the defendant not having disclosed several
22 major assets raises, in my mind, and I don't know if all of
23 that was in front of Judge Bloom, that she knew about that,
24 but whether or not he did --

25 MS. GERDES: We did not discuss that.

Proceedings

24

1 THE COURT: Well, here's my problem about flight:
2 Once those assets are liquidated, like the house in Florida
3 and his holding a sum of money that would permit him to
4 leave the country, for instance, that would not only create
5 an impact to the litigation here, but it would also
6 potentially have a detrimental effect on his suretors,
7 because if he left, they would be left holding the bag on a
8 \$2-million or \$3-million bond, and he would be off wherever
9 he was going and perhaps in a place where he couldn't be
10 brought back. Or if he used the money for some other
11 purpose, Pretrial wouldn't know, the Court wouldn't know,
12 you wouldn't know, the Government wouldn't know. That's a
13 demonstration to me that he cannot be trusted to fulfill his
14 obligations to the Court if he is released. And so there's
15 also that issue. And I don't plan to rule on the issue of
16 flight, but it raises a -- it puts us in a place where I
17 have to be concerned for the people who would entrust their
18 financial future in his probity. All right? And now you've
19 got two more people who have not gone before the magistrate
20 judge, and they would have to also go through the process,
21 which is what we would do in that situation.

22 MR. CONWAY: Yes.

23 THE COURT: So this is -- there's more going on
24 here than just the question of the gun under the bed.

25 MR. CONWAY: Yes, Judge.

Proceedings

25

1 THE COURT: There's the fact that he's behaving in
2 a potentially misleading or dishonest way with the Court.

3 Now, you pose it -- you spin it one way and the
4 Government spins it another way, and I'm not in his head --

5 MR. CONWAY: Right.

6 THE COURT: -- but if you've got that many assets
7 and you're a middle-class person, which is what he appears
8 to be, you know what you have. I can sit here and I can
9 list all of my substantial assets if someone asks me and I'm
10 obligated to tell them what they are. It's not like he
11 overlooked it. He owns a house with a trust, or whatever it
12 is, funds that came from somewhere. He's got a house in
13 Florida that he's selling and is about to close on. You
14 know, this is not -- this is not, you know, peanuts. It's
15 not like he has a \$20 gold piece from 1920 in his bureau
16 drawer. So that's really what my concern is with regard to
17 your client in part.

18 MR. CONWAY: If I could, Judge --

19 THE COURT: So I just wanted to put that out
20 there.

21 MR. CONWAY: -- just to put that in context. He
22 did mention the whole -- to Pretrial that he did -- you
23 know, he did say that it was his wife's home. It's in a
24 trust for her, so be that as it may. But that home, Judge,
25 and the Florida home are already liened up by the

Proceedings

26

1 Government. He's not getting any proceeds from either one
2 of those properties. The Government has, pursuant to
3 forfeiture, put a lien on them, so he's not getting any
4 assets. So in terms of using those assets to flee, they're
5 certainly not available to him.

6 THE COURT: I see.

7 MR. CONWAY: The people that are putting up bail
8 are the people that know him the best. It's his wife, it's
9 his mother, it's his brother, it's his mother-in-law, and a
10 friend that he's known for 25 or 26 years.

11 And, you know, Judge, you never can get into
12 somebody's mind, although I guess we often wish we could,
13 but, you know, you talk about sitting down for a Pretrial
14 report interview, here's somebody who is arrested at
15 6:00 o'clock in the morning, transported downtown, and the
16 next thing you know he's talking to somebody about his
17 assets. He's not thinking rationally at the time. I don't
18 think there was any attempt by Frank Russo here to hide
19 assets. He was sitting there bewildered as to what was
20 going on and he gave whatever information he could at the
21 time.

22 You know, we'll be happy to give a full listing of
23 all assets at this point so the Government can see them and
24 do what they need to do. But he's certainly not going to go
25 anywhere. He's certainly not going to harm his family and

Proceedings

27

1 friends.

2 And again, without belaboring the point, I think
3 the threats were colorful, were -- were nothing more than
4 puffery, and I think the conditions set by
5 Magistrate Judge Bloom and recommended by the
6 Pretrial Services are far and enough to render him not a
7 danger to anybody.

8 THE COURT: All right. Anything else from you,
9 Ms. Gerdes?

10 MS. GERDES: Your Honor, the only thing that I
11 would add is that I just can't accept that representation
12 that, you know, Mr. Russo is somebody who would -- you know,
13 a deer caught in the headlights and didn't understand what
14 was happened with Pretrial. We've listened to him for the
15 last 90 days, Judge, and so --

16 MR. CONWAY: That's not what I said, Judge.

17 THE COURT: Okay.

18 MS. GERDES: I'm sorry. That's how I interpreted
19 the comment, and so I'm just trying to respond to that.

20 THE COURT: I'm sorry. Mr. Conway, if you want to
21 say something else, I am open to having you speak. Just let
22 Ms. Gerdes finish her statement, please.

23 MR. CONWAY: Thank you. Thank you.

24 THE COURT: Go ahead.

25 MS. GERDES: So from the Government's perspective

Proceedings

28

1 we have gotten the smallest window into the life of Frank
2 Russo by listening to him for a 90-day period, and in that
3 period the man has talked extensively, extensively about
4 hiding his assets; about created entities; putting assets in
5 other entities so that the Government cannot track them;
6 about, you know, liquidating assets that he could -- we had
7 no idea that we would stumble upon these, about \$80,000 in
8 his house; and he is somebody who is just absolutely
9 deceptive and manipulative, and that's exactly what he did
10 with Pretrial Services, a branch of the Court, when he had
11 his first chance of interacting with somebody who was, you
12 know, going to make a recommendation to the Court if he was
13 somebody who should be trusted. And, you know, when
14 Defense Counsel gets the wiretap evidence, I do not think
15 that that is something that they are going to be in any
16 position to dispute.

17 But I will proffer to the Court that this is a
18 defendant who has taken great steps to try to --

19 THE DEFENDANT: (Inaudible response.)

20 MS. GERDES: I'm sorry.

21 -- to try and hide and conceal his assets from
22 the Court. And, again, he's not somebody who can be
23 trusted, Your Honor.

24 THE DEFENDANT: (Inaudible response.)

25 (Pause in proceedings.)

Proceedings

29

1 THE COURTROOM DEPUTY: Is everybody still there?

2 ALL PARTICIPANTS: Yes.

3 THE COURT: All right. Anything else, Mr. Conway?

4 MR. CONWAY: No, Your Honor. I'm not going to
5 belabor the point. I just, you know, as I said before, I
6 don't see a distinction between Smookler and Russo. And,
7 you know, without going through my whole other arguments
8 before, we'll be as transparent as we need to be with
9 anybody. As the Government just said, there are months and
10 months of wiretaps. This is going to be a complex case.
11 It's going to be almost nearly impossible for him to have
12 any meaningful participation in that defense if he's in the
13 Metropolitan Detention Center during a pandemic. So I would
14 ask, even if the bail package is not enough, that a certain
15 bail package be set to give us an opportunity to make that.
16 Although I do believe the one that we are proposing is more
17 than adequate.

18 (Pause in proceedings.)

19 THE COURTROOM DEPUTY: Hello? Is everybody there?

20 THE COURT: Yes, we're still going.

21 (Pause in proceedings.)

22 THE DEFENDANT: Your Honor, can I have a second?

23 THE COURT: Sure.

24 THE DEFENDANT: While I can't come up with
25 anything, so I'm just going to come up with --

Proceedings

30

1 THE COURT: Hold on. No, no, no. I didn't know
2 who said has asked that.

3 THE DEFENDANT: Okay. Fine.

4 THE COURT: No, please don't say anything.

5 THE DEFENDANT: All right.

6 THE COURT: I appreciate you would like to say
7 something --

8 THE DEFENDANT: Okay. All right.

9 THE COURT: -- but I need to protect your right to
10 remain silent and not create a larger record than is already
11 out there. So, please, whatever you do, don't say anything,
12 except to your lawyer. All right?

13 All right. Thank you very much.

14 I think this is a hard decision to make. I'm
15 concerned about two considerations -- or more than two,
16 actually. The statements that the defendant made to others,
17 which are in the nature of threats, I do not view those as
18 bravado. The Court views those as serious threats that were
19 made or recorded by the Government using wiretaps, and they
20 referred to -- at least some of them on Page 31 of the
21 detention memorandum, rather, of the Government, referred to
22 the use of a tactical shotgun which was found in the
23 defendant's home and the fact that this is a white-collar
24 crime that's alleged -- or white-collar crimes that are
25 alleged, the fact that this kind of factual circumstance is

1 more attuned or consistent with a case involving extortion
2 and threats of great physical harm. And even though this
3 defendant doesn't have a criminal history, the fact is that
4 people are capable of doing great injury to others who have
5 never done so before because they feel cornered or they feel
6 that their family is going to be injured or whatever it is
7 that they're doing. But these comments demonstrate, along
8 with the seized weapon and ammunition, demonstrate that the
9 defendant has demonstrated that he constitutes a threat to
10 the community and that is my great concern here.

11 So the Bail Reform Act directs the Court to order
12 a defendant detained pending trial where no condition or
13 combination of conditions would reasonably assure the
14 appearance of the person as required and where the safety of
15 any other person in the community is involved, and
16 dangerousness must be supported by clear and convincing
17 evidence.

18 I don't know how to address the problem with
19 Mr. Smookler because that's not before me. But I believe
20 that there is more than adequate evidence in this record
21 that supports by clear and convincing evidence that the
22 defendant constitutes the level of dangerousness sufficient
23 to hold the defendant in custody; and therefore, I'm going
24 to set aside the decision of Judge Bloom and enter a
25 permanent order of detention.

Proceedings

32

1 Is there anything else?

2 THE DEFENDANT: May I say something, Your Honor?

3 MS. GERDES: No, nothing from the Government.

4 Thank you.

5 THE COURT: All right. Thank you.

6 MR. CONWAY: Nothing for the defendant.

7 THE COURT: All right. Thank you everyone. Have
8 a good day.

9 (Matter concluded.)

10 --oo0oo--

11

12

13

14

15

16 *I (we) certify that the foregoing is a correct transcript*
17 *from the record of proceedings in the above-entitled matter.*

18 /s/ David R. Roy
19 DAVID R. ROY

20 22nd Day of August, 2020
21 Date

22

23

24

25

26

27

28